IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-7-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.10556 of 2006
W.P.M.P.No.11939, 11940 of 2006

S.Srinivasalu ... Petitioner

Vs.

1. The Food Corporation of India,
rep.by its Zonal Manager (South),
Zonal Office,
No.3, Haddows Road,
Chennai - 6.

2. The Food Corporation of India,
rep.by its Deputy General Manager (Personnel),
Zonal Office,
No.3, Haddows Road,
Chennai - 6. ... Respondents

Writ petition filed under Article 226 of Constitution f India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records erlating to the impugned order in O.O.No.32(1)/2005-CR Cell dated 31.10.2005 passed by the second respondent and quash the same and consequently direct the respondents to grant all terminal, service benefits and all other attendant benefits arising therefrom to the petitioner.

For Petitioner : Mr.W.M.Abdul Majeed

For Respondents : Mr.S.Vijayakumar

O R D E R

Petitioner seeks to quash the order of the second respondent dated 31.10.2005 and to direct the respondents to grant all terminal, service benefits and all other attendant benefits to him.

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2. The brief facts necessary for disposal of the writ petition as stated in the affidavit are as follows.

(i) Petitioner belongs to Kurumans Community, which is one of the Scheduled Tribes. He joined the services of the Ministry of Food and Agriculture Department, Government of India at Madras as a Peon as per the order dated 19.12.1966, after his name was sponsored by the District Employment Exchange, North Madras, Madras-1. In the year 1971, the Food Corporation of India was formed and the petitioner's services were transferred to the said Corporation. In the year 1977, petitioner's services along with others were confirmed by the Food Corporation of India, by order dated 28.7.1977. Later on, petitioner was promoted as Daftry in the year 1983; as Gestetner Operator in the year 2000; and again as Senior Gestetner Operator in the same year 2000. He reached the age of superannuation on 31.10.2005 and on the said date the impugned order of cancellation of petitioner's appointment was issued by the second respondent.

(ii) The said order of cancellation of appointment was passed on the ground that the Community certificate which was required to be produced by the petitioner in terms of his order of appointment dated 19.12.1966 did not find place in the service records and therefore it was confirmed that the petitioner had not submitted the Community Certificate at the time of his subsequent three promotions and the petitioner having failed to comply with the terms and conditions of the appointment order/promotion orders, he is not eligible for enjoying the benefits of initial appointment and subsequent promotions in the Food Corporation of India under the Scheduled Tribes category and therefore the appointment order issued by the Regional Director, Southern Region, Ministry of Food and Agriculture Department, Government of India, Madras is cancelled. The said order is challenged in this writ petition.

(iii) The case of the petitioner is that he is a Scheduled Tribe candidate belonging to Hindu Kurumans community and he produced the community certificate issued by the competent authority as per the conditions contained in the order of appointment dated 19.12.1966. The petitioner's two sons have been issued with community certificates to the effect that they belong to Hindu Kurumans Community and the said certificates were found valid by the District level Caste Scrutiny Committee. The petitioner also served as Zonal Secretary in the then FCI Class IV Employees Union and he was one of the National Negotiating Member for South Zone for the Scheduled Tribes in FCI and also held high positions in the Food Corporation of India Executive Staff Union, which is a recognised Union.

(iv) It is stated that because of the petitioner's involvement in the Union activities in the year 2005 i.e., on 24.10.2005, the

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second respondent issued a show cause notice and called upon the petitioner to show cause before the first respondent as to why action should not be taken for having failed to produce the community certificate so far and the petitioner was directed to produce the same within two days. The said show cause notice was issued to the petitioner before five days of his retirement and thereafter on 31.10.2005 the impugned order was passed alleging that the petitioner has not produced community certificate during the time of his appointment in the year 1966 and also on subsequent three occasions when he was promoted.

(v) The specific case of the petitioner is that he had already produced the community certificate in the year 1966 itself at the time of his initial appointment before the Regional Director (Food), Southern Region, Ministry of Food and Agriculture, Government of India, Madras, and therefore no demand can be made to produce community certificate on promotion and therefore the allegation that the petitioner had not produced the community certificate at the time of his subsequent promotions is not tenable. The reason stated in the impugned order that some squad/committee was constituted and the same had conducted enquiry and therefore the notice was issued on 24.10.2005 is unsustainable because neither the report submitted by the Enquiry committee was forwarded to the petitioner nor he was asked to submit any remarks. The show cause notice dated 24.10.2005 gives only two days time to produce new community certificate, which is not a reasonable time and the said action of the respondents show the pre-determined mind of the second respondent in cancelling petitioner's appointment.

3. The first respondent has filed a counter affidavit wherein it is stated that when the petitioner was appointed in the Regional Directorate of Food Corporation of India, he was directed to produce community certificate and it was informed that if the condition is not complied with, the appointing authority has powers to cancel his appointment without notice. Subsequent to the formation of Food Corporation of India, petitioner's services were transferred to the Corporation and he was promoted in the year 1983 on condition that he should furnish community certificate confirming his status as Scheduled Tribe. The contention of the petitioner that he had produced community certificate even at the time of joining in the service in the year 1966 is false. It is further stated that the community certificate issued to the petitioner's daughter was cancelled by the District Vigilance Committee in its proceedings dated 20.12.2004 wherein community certificate issued to the petitioner's sons were also referred to, though not cancelled. It is stated that the petitioner was given several opportunity to produce the community certificate, which the petitioner willfully failed to produce the same. The allegations that the principles of natural justice is violated is denied in the counter affidavit.

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4. The learned counsel appearing for the petitioner, apart from reiterating the contentions raised in the affidavit, submitted that the petitioner was employed by the Government of India and he was permanently absorbed in the Food Corporation of India without any pre-condition and the second respondent cannot now contend that the petitioner has not produced community certificate before the Regional Director (Food), Southern Region, Ministry of Food and Agriculture, Government of India, Madras. Learned counsel further contended that by virtue of the impugned order, the petitioner's service from 29.12.1966 to 31.10.2005 is nullified and the petitioner's retirement benefits are denied and therefore the said impugned order affects the civil rights of the petitioner, for which no enquiry was conducted as contemplated under Article 311 of the Constitution of India and Section 12A of the Food Corporation of India Act. Therefore, according to the learned counsel for the petitioner, the impugned order is unsustainable on several grounds.

5. The learned counsel for the petitioner cited the decision reported in 1993 (2) LW 143 (S.Prabhavathi v. The Revenue Divisional Officer, Thiruppathur) wherein Hon'ble Mr.Justice AR.Lakshmanan (as he then was) held that if a person's close relative belongs to a particular community, the said person should also be deemed to belong to the same community. In the decision reported in AIR 1999 Madras 241 (S.Natarajan v. District Collector, Tuticorin) Hon'ble Mr.Justice S.S.Subramani held that if the father is issued with a community certificate, his children are also entitled to be issued with similar community certificate. The said decision was followed by the Hon'ble Mr.Justice P.Sathasivam in the case of N.Rajeswari v. The District Collector, Nellai Kattabomman District, Tirunelveli and Others, reported in (2000) 1 MLJ 267. In the said decision this Court held that if a close relative of a person is given a certificate by the competent authority certifying that he belongs to a particular community, the community status of the relative cannot be doubted. The learned counsel also submitted that in the decision reported in JT 1997 (7) SC 660 (R. Kandasamy v. The Chief Engineer, Madras Port Trust) the Honourable Supreme Court held that the community certificate issued by the competent authority so long as are not set aside, the same will hold good for all purposes and every authority is bound to accept the same as valid.

6. The learned counsel appearing for the respondents reiterated the contentions raised in the counter affidavit and cited the decision of the Honourable Supreme Court reported in (2004) 2 SCC 105 (R.Vishwanatha Pillai v. State of Kerala) and (2005) 7 SCC 690 (Bank of India and another v. Avinash D.Mandivikar and others) to show that if an appointment order is obtained by producing a false community certificate by a person holding civil post, he can be dismissed without following the due process of law as conferred under

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Article 311 of Constitution of India as the appointment order itself is a nullity.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents. The appointment order issued to the petitioner by the Regional Director (Food), Southern Region, Ministry of Food and Agriculture Department, Government of India, Madras-6 dated 19.12.1966 states that the appointment will be subject to production of certain documents at the time of reporting to duty. One of the document required to be submitted, as per clause 7 was Community Certificate in the prescribed form in respect of the candidates claims to be SC, ST or Anglo Indian community.

8. It is the specific case of the petitioner that he had produced the community certificate before the Regional Director (Food), Southern Region, Madras-6, even at the time of joining duty and the same was accepted and the petitioner's service was also confirmed by the Regional Director (Food), Southern Region, Ministry of Food and Agriculture Department, Madras-6. The service register dated 2.8.1967 maintained by the Regional Director of Southern Region clearly states that the petitioner is a Hindu ST. The respondent Corporation passed an order on 28.7.1977 wherein 74 persons were absorbed in the services of FCI and they are regularly appointed to the post shown in Column No.5 and are confirmed from the date shown against each in terms of regulation 5(5) of FCI Staff Regulation. Petitioner's name is found in Sl.No.5 in the list of persons. The said confirmation order nowhere contain a condition that the person should produce community certificate or their confirmation is subject to production of community certificate. Now, the petitioner is on dialysis twice a week and a certificate dated 2.3.2004 to this effect is produced from Dr.V.Siranjeevi, Professor and Head of the Department of Nephrology, Kilpauk Medical College, Kilpauk, Chennai.

9. The learned counsel for the respondents also produced the file on circulation which contains the appointment order issued by the Regional Director (Food), Southern Region, Ministry of Food and Agriculture, Government of India, Madras, dated 19.12.1966, the promotion order issued to the petitioner on 22.12.1992 by the first respondent, the promotion order dated 23.12.2000 issued by the first respondent and final promotion order issued on 19.1.2001. Only in the final promotion order dated 19.1.2001 it is stated that the candidates promoted against the reserved points including the petitioner shall produce latest community certificate within a month.

10. As rightly argued by the learned counsel for the petitioner submitted that pursuant to the Supreme court decision JT 1997 (7) SC 660 (cited above), the community certificate issued once, so long as the same is not cancelled, is valid for all purposes and every

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authority is bound to accept the same as valid and therefore the request made by the first respondent in the year 2001 to produce the latest community certificate is not valid.

11. The decision cited by the learned counsel for the petitioner fully supports his case particularly when the cancellation of community certificate of petitioner's daughter is not valid in the eye of law because the said cancellation is made by two member Committee, which is contrary to the judgment of the Supreme Court reported in AIR 1995 SC 94 = (1994) 6 SCC 241 (Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development and others). The Government itself accepted the said position and issued a revised order in G.O.Ms.No.111 dated 26.10.2005 and constituted a three member Committee to verify the community status of the candidates.

12. The decision cited by the learned counsel for the respondents are clearly distinguishable since in the said cases the community status of the candidates were verified by the competent authorities and the cancellations were found valid by the High Court of Kerala and by the Honourable Supreme Court. Para 11 of the decision reported in (2004) 2 SCC 105 (cited supra) can be usefully referred to for proper appreciation of the facts in the said decision, which reads as under,

> "In Kumari Madhuri Patil case ((1994) 6 SCC 241) the admissions were taken by two sisters to professional courses on the basis of false caste certificates produced by them, which were cancelled after the report submitted by the Verification Committee to the effect that the certificates produced by the appellants therein were false and that the appellants did not belong to Scheduled Caste/Scheduled Tribe. The Court observed that all citizens were to be treated equally. That the Constitution guaranteed to the citizens equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibit discrimination among citizens but Article 15(4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article 16(1) requires equality of opportunity to all citizens in the matters of appointment to an office or a post under the Union or a State Government or a public undertaking etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of castes not adequately represented in the services under the

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State. That the admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Caste or Scheduled Tribe or OBC candidates as enjoined in the Constitution, of the benefits conferred on them by the Constitution. Thereafter, the Court laid down the procedure for the grant of social status certificate, its due verification and the examination by the Scrutiny Committee of its genuineness. If the certificate was found to be genuine, then no further action was required to be taken but if the caste certificate produced was found to be false or fraudulently obtained, then immediate action was required to be taken. The findings recorded by the Scrutiny Committee were made final and conclusive which could not be challenged in any suit or any proceedings except in the High Court under Article 226 of the Constitution of India. The Scrutiny committee was required to communicate its report under a registered cover to the educational institution as well as the appointing authority. The educational institution or the appointing authority on receipt of the said report was required to cancel the admission/appointment without any further notice to the candidate and debar the candidate from further studying or continuing in office in a post. This was done to simplify the procedure for grant of the social status certificate as well as its scrutiny, and, if found to be false, the follow-up action to be taken. It was done primarily for quick disposal of such matters so that the genuine Scheduled Caste and Scheduled Tribe persons are not deprived of the benefits conferred on them under the Constitution of India and to debar the non-genuine Scheduled Castes and Scheduled tribes from taking advantage of the benefit conferred under the Constitution on the basis of false caste certificate obtained by them by committing a fraud. The persons who had obtained admission or got the appointment on the basis of false caste certificate thereby usurping the seat/ post reserved for the Schedule Castes/Scheduled Tribes were required to be weeded out by prompt action. It was held (SCC p.254, para 13)

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> "13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude." "

13. In the decision reported in (2005) 7 SCC 690 (cited supra) also the facts are that the duly constituted committee found that the candidate was not belonged to that community and in such a situation, the Honourable Supreme Court held that the appointment obtained by the candidate was not valid and mere delay in making verification will not justify the candidate for reinstatement. It is specifically held that the finding of the Scrutiny Committee having been accepted, the delay in making reference loses its significance.

14. Here in this case, petitioner's community status was not determined by any duly constituted Committee as if he do not belong to ST community. Therefore the said decisions of the Honourable Supreme Court are factually not applicable to the facts in the present case.

15. Taking into consideration the over all view of the matter including the confirmation order given by the respondents in the year 1977 while absorbing the petitioner along with other employees in the FCI, I am of the firm view that the request of the respondents to produce a community certificate just six days prior to the date of his retirement is unauthorised since it is not proved that the petitioner has not produced community certificate before the Regional Director (Food), Southern Region, Ministry of Food and Agriculture,

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Government of India, Madras-6, in the year 1966. Even assuming the petitioner has not produced the community certificate in the year 1966 as per the condition in the appointment order, petitioner's appointment could have been cancelled then itself by the authority who appointed the petitioner. Therefore the contention of the respondents that the petitioner has not produced the community certificate before the appointing authority is not justified. The said conclusion is arrived at by the second respondent only on presumption.

16. For the reasons stated above, the impugned order dated 31.10.2005 is set aside and the respondents are directed to treat the petitioner as retired from service from 31.10.2005. All retirement benefits payable to the petitioner shall be calculated and paid to him within a period of eight weeks from the date of receipt of copy of this order.

The writ petition is ordered in the above terms. No costs. Connected miscellaneous petitions are closed.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Zonal Manager (South), Food Corporation of India,
Zonal Office, No.3, Haddows Road, Chennai - 6.

2.The Deputy General Manager (Personnel),Food Corporation of India,
Zonal Office,No.3, Haddows Road, Chennai - 6.

+ one cc to Mr.W.M.Abdul Majeed, Advocate Sr.No.28404.
+ one cc to Mr.S.Vijayakumar, Advocate Sr.No.32162.

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